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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,878	07/29/2003	Donald E. Weder	8403.938	5554

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EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,878

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/29/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities:

Paragraph [0001] should be updated to reflect the patent status of applications 10/282,504 and 10/084,743.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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1. **Claims 1-3, 5, 6, 8, 16, 17, 20, 21 and 23** are rejected under 35

U.S.C. 102(b) as being anticipated by Weder (US 5,029,412) 1991.

Regarding **independent claim-1**:

Weder '412 discloses a preformed sleeve having a pleated base and skirt,
(see Title and Abstract).

A base portion (12f) and extension elements (22f) as cited, are readily apparent in the sleeve depicted in Figure-9; also depicted is a connected portion (50) as cited.

Weder does not specifically disclose a flattened state as cited in the claim preamble.

Weder does disclose "substantially non-shape sustaining" construction,
(column-2, lines 58-61); which, is readable as and capable of having an initially flattened state, as cited in the claim preamble.

The instant sleeve is therefore anticipated by Weder '412.

Regarding **independent method claim-16**:

The discussion above regarding independent apparatus claim-1 is relied upon.

The reworded sleeve of the instant method claim is encompassed by the sleeve of instant independent claim-1; and, the method steps of the instant method claim-16 are inherent to the sleeve of Weder '412 (flower pot cover).

Regarding **claim-2**:

The discussion above regarding claim-1 is relied upon.

Although not depicted, the sleeve of Weder '412 is capable of substantially covering a pot as cited (see Title, "Flower Pot Cover").

Regarding **claim-3**:

The discussion above regarding independent claim-1 is relied upon.

Weder discloses, "the flower pot cover may have any thickness", (column-3, lines 19-21); furthermore, the thickness cited in the instant claim is recited in claims 5 and 6 of Weder '412.

Regarding **claim-5**:

The discussion above regarding independent claim-1 is relied upon.

Weder '412 recites in claim-4 construction materials as cited in the instant claim.

Regarding **claim-6**:

The discussion above regarding independent claim-1 is relied upon.

Weder '412 depicts in Figure-9 a skirt portion (14) capable of serving as a handle, as cited.

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Regarding **claims 8 and 17**:

The discussions above regarding independent claims 1 and 16 are relied upon.

Weder '412 depicts in Figure-9, continuous folds as cited in the instant claims.

Regarding **claims 20, 21 and 23**:

The discussion above regarding independent claim-16 is relied upon.

The flower pot cover recited in the Title of Weder '412 is capable of the disposition as cited in the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 4 and 18** are rejected under 35 U.S.C. 103(a)
as being unpatentable over Weder (US 5,029,412)1991
in view of Landau (US 5,235,782)1993.

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Regarding **dependent claims 4 and 18**:

The discussions above regarding independent claims 1 and 16 are relied upon.

Weder '412 is silent as to the base portion lower end having a gusset.

Landau '782 with an effective filing date of 1991 teaches a cover having a gusset in the base lower end, for a potted plant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the pot cover of Weder '412 with a gusseted lower end as cited and as taught by Landau, for the well-known advantages of that feature.

3. **Claim-7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (US 5,029,412)1991 in view of Weder (US 5,490,352)1996.

Regarding **dependent claim-7**

The discussion above regarding independent claim-1 is relied upon.

Weder '412 is silent as to the base portion having a drainage element therein, as cited in the instant claim.

Weder '352 with an effective filing date of 1992 teaches a drainage hole in both a pot and sleeve.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the pot cover of Weder '412 with a drainage element therein the base portion as cited and as taught by Weder '352, for the well-known advantages of that feature.

4. **Claims 9-13, 15, 19 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (US 5,029,412)1991 in view of Weder (US 5,493,809)1996.

Regarding **independent claim-9**:

The discussion above regarding independent claim-1 is relied upon.

The sleeve of the instant claim differs from the sleeve of independent claim-1 in that a detachable upper portion is further cited in the instant independent claim-9.

Weder '412 is silent as to a detachable upper portion as cited.

Weder '809 with an effective filing date of 1988 teaches a detachable upper portion as cited in the instant claim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the pot cover of Weder '412 with a detachable upper end as cited and as taught by Weder '809, for the well-known advantages of that feature.

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Regarding **claim-10**:

The discussion above regarding independent claim-9 is relied upon.

The discussion above regarding claim-2 is relied upon, as the instant claim-10 is a repeating claim, although reworded.

Regarding **claim-11**:

The discussion above regarding independent claim-9 is relied upon.

The discussion above regarding claim-3 is relied upon, as the instant claim-11 is a repeating claim.

Regarding **claim-12**:

The discussion above regarding independent claim-9 is relied upon.

The discussion above regarding claim-5 is relied upon, as the instant claim-12 is a repeating claim.

Regarding **claim-13**:

The discussion above regarding independent claim-9 is relied upon.

The discussion above regarding claim-6 is relied upon, as the instant claim-13 is a repeating claim.

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Regarding **claim-15**:

The discussion above regarding independent claim-9 is relied upon.

The discussion above regarding claims 8 and 17 is relied upon, as the instant claim-15 is a repeating claim, although reworded.

Regarding **claim-19**:

The discussion above regarding independent claim-16 is relied upon.

Weder '412 is silent as to a detachable upper portion.

Weder '809 with an effective filing date of 1988 teaches a detachable upper portion as cited in the instant claim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the pot cover of Weder '412 with a detachable upper end as cited and as taught by Weder '809, for the well-known advantages of that feature.

Regarding **claim-22**:

The discussion above regarding independent claim-19 is relied upon.

The discussion above regarding claim-16 is relied upon as encompassing the instant plant package.

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5. **Claim-14** is rejected under 35 U.S.C. 103(a) as being unpatentable over Weder (US 5,029,412)1991 in view of Weder (US 5,493,809)1996 as applied to claim-9 above, and further in view of Weder (US 5,490,352)1996.

Regarding **claim-14**:

The discussion above regarding independent claim-9 is relied upon.

Weder '412 is silent as to a drainage element therein the lower portion.

Weder '352 with an effective filing date of 1992 teaches a drainage hole in both a pot and sleeve.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the pot cover of Weder '412 with a drainage element therein the base portion as cited and as taught by Weder '352, for the well-known advantages of that feature.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. **Claims 1-23** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,629,385 in view of claims 1-2 of U.S. Patent No. 6,634,137.

Although the conflicting claims are not identical, they are not patentably distinct from each other because; the preformed sleeves of the instant independent claims 1,9 and 16 are encompassed by the preformed sleeves of the conflicting independent claims 1, 9 and 16.

Instant dependent claims 2-8, 10-15 and 17-18 are identical or encompassed by their corresponding conflicting claims 2-8, 10-15 and 17-18.

Instant claim-19 is recited in related conflicting claim-2 of the secondary reference, the plant package of repeating instant claims 21-23 is encompassed by the preformed sleeve of conflicting independent claim-1 of the primary reference, and instant claim-20 is encompassed by the preformed sleeve of conflicting independent claim-1 of the primary reference.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
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